IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
and
THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

C.M.A.No.1908 of 2006

M/s.National Insurance Co. Ltd.
Motor Third Party Claims
No.66, Greams Road
Chennai-600 006. .. Appellant/2nd Respondent

versus

1. S.Umasundari
2. S.Manikandan (minor)
3. S.Rojapoo

4. S.A.Selvaraj
(2nd respondent rep. by his mother and next friend S.Umasundari)

5. R.Kavitha ..Respondents/Petitioner & 1st Respondent

(5th respondent set ex parte in the lower Court.

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 6.12.2005 made in M.C.O.P.No.2706 of 2000 on the file of the Motor Accidents Claims Tribunal (III Judge, Small Causes Court), Chennai.

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For appellant : Mr.K.S.Narasimhan

For respondents-1 to 4 : Mr.L.Mohanraj

JUDGMENT

(Judgment of the Court was delivered by CHITRA VENKATARAMAN,J.)

This appeal is by the Insurance Company questioning the award of a sum of Rs.22,00,000/- as excessive and not based on any material.

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2. It is seen that the claimants are the wife, minor child and the parents of the deceased Santhana Krishnan. At the time of the accident on 12.12.1999, the deceased was 30 years old. Apart from being a partner in M/s.S.R.Traders, he was a Consulting Engineer, earning a sum of Rs.5,500/- per month. The first claimant, as P.W.1, stated that her husband had 50% share in the partnership firm having its earnings to the extent of Rs.1,60,000/- per year. In support of her claim, Ex.A3, partnership agreement and Exs.A11 and A12, the accounts relating to the firm, and the balance sheet Exs.A13 and A14 were marked. The Chartered Accountant auditing the firm's account was also examined as P.W.3. He deposed as regards the earnings of the firm. He also stated that for the year 1999-2000, the deceased Santhana Krishnan paid a sum of Rs.32,578/- as income tax. The Tribunal observed that on an analysis of Exs.A11 to A16, it showed that the deceased was earning a sum of Rs.25,000/- per month. P.W.4, a Building Contractor, stated that the deceased had done business along with him and he was earning a sum of Rs.4,500/- per month. Going by the evidence available, the Tribunal came to the conclusion that the deceased was earning not less than a sum of Rs.15,000/- per month. Taking note of the age of the deceased and the claimants, the Tribunal applied the multiplier of 18 and fixed the following award:

Contribution (Rs.10,000/- X 12 X 18)	:	Rs.21,60,000/-
Transportation charges	:	Rs. 1,000/-
Loss of consortium	:	Rs. 10,000/-
Loss of love and affection to all the claimants:		Rs. 10,000/-
Funeral expenses	:	Rs. 10,000/-
Loss of estate	:	Rs. 10,000/-
Total sum awarded by the Tribunal	:	Rs.22,01,000/-,
restricted to	:	Rs.22,00,000/-

with interest at 7.5% per annum. The Tribunal granted a sum of Rs.13,00,000/- to the wife, Rs.5,00,000/- to the minor son and Rs.2,00,000/- each to the parents.

3. Aggrieved of this, the appeal is preferred by the Insurance Company.

4. Learned counsel appearing for the Insurance Company submitted that the Tribunal erred in assessing the income of the deceased at Rs.15,000/- per month and in applying the multiplier of 18, which was contrary to the decision of the Supreme Court reported in 2005 (7) Supreme 171 (THE MANAGING DIRECTOR, TNSTC LTD. Vs. K.I.BINDU) as well as 2005 AIR SCW 2542 (TAMIL NADU STATE TRANSPORT CORPORATION LTD. Vs. S.RAJAPRIYA). He also questioned the sum of Rs.40,000/- awarded under the conventional heads.

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5. A perusal of the evidence of the Chartered Accountant showed that the firm had a net profit of Rs.2,51,623/-. Even after working out the share income from that, and taken along with the other income as a Consulting Engineer, the contribution fixed is excessive and is not substantiated by any direct or indirect evidence. Hence, keeping in the background the earnings as certified by the Chartered Accountant, the contribution could reasonably be fixed at Rs.1,00,000/- per year.

6. As regards the multiplier, as rightly stated by the learned counsel for the appellant, taking note of the age of the deceased and the claimants and applying the decisions cited above, the proper multiplier would be 16, thus the contribution could be fixed at Rs.16,00,000/-. Apart from this, the compensation awarded under the conventional heads need to be re-worked. At the time of the accident, the second claimant was a minor. Considering the age of this claimant, a sum of Rs.15,000/- towards loss of love and affection would meet the ends of justice. The first claimant-wife who was 26 years old, was given a compensation for the loss of consortium at Rs.10,000/- which also merits to be raised to Rs.50,000/-. A sum of Rs.20,000/- to be shared equally by the parents for the loss of love and affection, is also hereby awarded as against a sum of Rs.10,000/- to all the claimants towards loss of love and affection. Apart from this, a sum of Rs.5,000/- towards funeral expenses is hereby awarded, thus in all, the compensation payable works out to Rs.16,90,000/- as against a sum of Rs.22,00,000/- awarded by the Tribunal. The said compensation of Rs.16,90,000/- awarded by this Court shall carry interest at 7.5% per annum, as ordered by the Tribunal.

7. It is stated that the parents are senior citizens. Considering the age of the third and fourth respondents, a sum of Rs.2,00,000/- each shall be given to them and on the balance of a sum of Rs.12,90,000/-, a sum of Rs.6,40,000/- shall be deposited to the credit of the minor child and Rs.6,50,000/- shall be given to the wife. The share payable to the minor son shall be kept in fixed deposit in a nationalised bank till he attains majority and the mother, the first respondent herein, shall be permitted to withdraw the accrued interest once in six months.

With the above modification, the appeal is allowed. There will, however, be no order as to costs. Connected M.P.No.1 of 2006 is closed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To:

The Motor Accidents Claims Tribunal
III Judge, Court of Small Causes
Madras.

1 cc To Mr.L.Mohan Rao, Advocate, SR.17475.
1 cc To Mr.K.s.Narasimhan, Advocate, SR.12444.

C.M.A.No.1908 of 2006

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